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No. 91-655
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991
FILED
DEC 2 1991
OFFICE OF THE CLERK

THE PEOPLE OF THE STATE OF MICHIGAN,
PETITIONER

vs.

DONALD WATKINS
CHRISTIAN PHILLIPS
MICHAEL HUNTER,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

REPLY BRIEF OF PETITIONER

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QUESTION PRESENTED

SHOULD THIS COURT GRANT CERTIORARI, PARTICULARLY IN LIGHT OF THE CONTRADICTORY STATEMENTS CONTAINED IN IDAHO V WRIGHT, LEE V ILLINOIS, AND CRUZ V NEW YORK, TO SETTLE THE CONFLICT IN THE NATION AS TO WHETHER AND WHEN THE CONFRONTATION CLAUSE PERMITS A CODEFENDANT'S CONFESSION WHICH INculpates THE ACCUSED TO BE ADMITTED AS SUBSTANTIVE EVIDENCE AGAINST THE ACCUSED?

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REPLY

In his answer to the petition, counsel for respondent Watkins has made a counterstatement of the question, which includes an assertion that "the matter in question was decided clearly under Michigan Rule of Evidence and Michigan Constitution...." In his Statement of the Case he also states that the Michigan Supreme Court held that the "statements were contrary to MRE 804(B)(3) and violated defendant's right under 1963 Mich. Constitution Art. 1, sec 20...." These statements are remarkable for their inaccuracy. Though Petitioner hopes that the point was made clear in the petition, because counsel for Respondent Watkins has so misread the Michigan Supreme Court opinion Petitioner makes this brief reply.

The majority for reversal in the Michigan Supreme Court was made up of two opinions of two justices each. Only two justices stated that the admission of the unredacted confessions as substantive evidence violated the rule of evidence. The other two justices, through the opinion of Justice Brickley, did not reach this question ("I decline to endorse the Chief Justice's reasoning regarding the so-called carry-over rule in the context of declarations against penal interest....I would leave this issue open for another day." 438 Mich at 677). If Petitioner were to prevail in this court the Michigan Supreme Court would be free to visit that question on remand (where petitioner would argue that the two justices in the Chief Justice Cavanagh opinion are absolutely mistaken). But it is disingenuous to state that the court decided the case on the basis of the Michigan rule of evidence, when clearly only two justices so stated.

With regard to the Michigan Constitution, there is no hint in either opinion for reversal that the case is decided only on the Michigan Constitution, or that the Michigan Constitution requires something different than the federal. In short there is not the "plain statement" required by Michigan v Long, 463 US 1032 (1983). Indeed, the opinion of Justice Brickley, supplying the third and fourth votes for reversal, cites only the Sixth Amendment ("I respectfully cannot agree with the dissent that the confessions at issue 'bear the particular guarantees of trustworthiness required by the Sixth Amendment.'" 438 Mich at 677. Petitioner has presented for this Court's review an important question of federal constitutional law, on which lower courts are inconsistent, and on which related

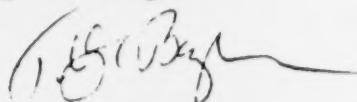
precedents from this Court are
inconsistent.

CONCLUSION

WHEREFORE, the People request that
plenary review be granted.

Respectfully submitted,

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